

REMARKS

Favorable reconsideration of this application as presently amended is respectfully requested. Claims 1-69 are pending. Of the pending claims, claims 7-19, 21-28, 32, 34, 35, and 46-69 have been withdrawn from consideration. In this Amendment, claims 1, 20, 29, 30, 31, and 33 are amended. No new matter is added.

Support for the amendment to claim 1 is found in the specification at page 7, lines 4 and 14, in FIGS. 1A and 1B, as well as elsewhere in the originally filed specification, drawings, and claims. Support for the amendment to claims 20, 29-31, and 33 is found in the specification at page 11, line 6 through page 13, line 13 as well as elsewhere in the originally filed specification.

The Examiner is thanked for indicating that claims 36-48 are allowable. However, please note that it is Applicant's belief that claims 37-40, 43-44, and 46 were previously subject to the restriction requirement. If this is incorrect, please advise Applicant of such and allow these claims as indicated. At the least, Applicant acknowledges with thanks allowance of claims 36, 41, 42, 45, and 47.

Claim 1 as amended more clearly claims a non-woven top layer that receives and *entrap*s particles. However, Brazzell only describes using an artificial grass type of material to line on top of an absorbent sheet to line a tray. Specifically, Brazzell teaches at column 2, lines 54-57 that "[T]his artificial grass layer 31 may be made of raffia, shredded paper, shredded plastic, or other material of similar texture, or it may be a woven fabric with a nap such as plastic artificial grass..." Therefore, Brazzell does not teach or suggest using a non-woven layer for to entrap particles claimed by claim 1. On the contrary, Brazzell only teaches an artificial grass material to absorb urine, and, therefore, claim 1 is patentable over Brazzell.

Under the 102 rejection, the Examiner asserted that the use statements of claims 20, 29-31, and 33, which depend from claim 1, did not serve to patentable distinguish the claimed structure over that of the reference. Claims 20, 29-31, and 33 as now amended eliminate this use language and more clearly claim the patentable features.

Claims 2-6, 20, 29-31, and 33 depend directly or indirectly from claim 1, and, accordingly, include all of the patentable features of claim 1 as well as other patentable features. Therefore, claims 2-6, 20, 29-31, and 33 are patentable over Brazzell for at least the reasons discussed above with respect to claim 1.

Claim 4 is rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 3,752,121 to Brazzell in view of U.S. Patent No. 5,216,980 to Kiebke. This rejection is respectfully traversed with respect to the claims as currently presented.

Claim 4 claims a pad having a non-woven top layer treated with baking soda. As admitted in the Office Action on page 3, Brazzell does not disclose the use of baking soda or odor-counteractive agent. Kiebke is only cited for teaching a litter composition containing baking soda or sodium bicarbonate and a deodorizer. The Office Action cites no description or drawing in Kiebke that shows a pad of any kind treated with baking soda. In fact, the Kiebke only discloses that baking soda is useful as a kitty litter odor-counteractant, so Kiebke cannot teach nor suggest the baking soda treated, non-woven pad as claimed by claim 4, and, accordingly, Kiebke cannot remedy the deficiencies of Brazzell with respect to failing to teach or suggest claim 4's feature of a non-woven particle entrapment pad with a baking soda treatment.

Furthermore, the combination of Brazzell and Kiebke is *prima facie* improper because the Office Action has cited no portion of Brazzell that would supply a person of ordinary skill in the art with a motivation to combine the teachings of Brazzell with the teachings of Kiebke. As stated by the Federal Circuit in *Sibia Neurosciences Inc. v. Cadus Pharmaceutical Corp.*, 55 USPQ2d 1927, 1931 (Fed. Cir. 2000), "[d]etermining whether there is a suggestion or motivation to modify a prior art reference is one aspect of determining the scope and content of the prior art, a fact question subsidiary to the ultimate conclusion of obviousness." (citing *Tec Air, Inc. v. Denso Mfg.*, 52 USPQ2d 1296, 1297-98 (Fed. Cir. 1999) (stating that the factual underpinnings of obviousness include whether a reference provides a motivation to combine its teachings with another)). Furthermore, as noted by the Federal Circuit in *In re Lee*, 61 USPQ2d 1430, 1433 (Fed. Cir. 2002), specific

reasons must be shown in the art suggesting a combination of references. (See also *In re Kotzab*, 217 F.3d 1365, 1371, 55 USPQ2d 1313, 1317 (Fed. Cir. 2000) (“[P]articular findings must be made as to the reason the skilled artisan, with no knowledge of the claimed invention, would have selected these components for combination in the manner claimed.”); *In re Rouffet*, 149 F.3d 1350, 1359, 47 USPQ2d 1453, 1459 (Fed. Cir. 1998) (“[E]ven when the level of skill in the art is high, the Board must identify specifically the principle, known to one of ordinary skill, that suggests the claimed combination.”)). Brazzell addresses the issue of deodorizer at column 2, lines 15-22 by using “...a small bottle of non-toxic deodorizer that may be mounted on an instruction card...If desired, this artificial hydrant 15 may be used as a receptacle for the deodorant spray...” Kiebke discloses using sodium bicarbonate as part of an improved cat litter composition. As Brazzell thoroughly addresses the issue of odor by suggesting a spray and as the invention of Brazzell is directed solely to a cat litter composition, there is no motivation to combine the teachings of Brazzell and Kiebke. Because the Office Action has cited no portion of Brazzell that would supply a person of ordinary skill in the art with a motivation to combine the teachings of Kiebke with the teachings of Brazzell, the combination of Brazzell with Kiebke is *prima facie* improper.

Furthermore, even if the combination of Brazzell with Kiebke were proper, Kiebke does not overcome the shortcomings of Brazzell, namely that Brazzell does not disclose a particle entrapment pad having a non-woven top layer. The combination of Brazzell and Goss is not sufficient to reject claim 4 because the Brazzell alone is not sufficient to reject claim from which claim 4 depends.

Claim 5 is rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 3,752,121 to Brazzell in view of U.S. Patent No. 6,039,004 to Goss et al. (Goss). This rejection is respectfully traversed with respect to the claims as currently presented.

Claim 5 claims a pad having a non-woven top layer treated with an anti-microbial agent. As admitted in the Office Action on page 3, Brazzell does not disclose the use of an anti-microbial agent. Goss is only cited for teaching a litter composition containing an anti-microbial agent. The Office Action cites no description or drawing in Goss that shows

a pad of any kind treated with an anti-microbial agent. In fact, the Goss only discloses that a bactericide can be included in a kitty litter composition, so Goss cannot teach nor suggest the anti-microbial treated, non-woven pad as claimed by claim 5, and, accordingly, Goss cannot remedy the deficiencies of Brazzell with respect to failing to teach or suggest claim 5's feature of a non-woven particle entrapment pad with an anti-microbial treatment.

Furthermore, the combination of Brazzell and Goss is *prima facie* improper because the Office Action has cited no portion of Brazzell that would supply a person of ordinary skill in the art with a motivation to combine the teachings of Brazzell with the teachings of Goss. As stated by the Federal Circuit in *Sibia Neurosciences Inc. v. Cadus Pharmaceutical Corp.*, 55 USPQ2d 1927, 1931 (Fed. Cir. 2000), “[d]etermining whether there is a suggestion or motivation to modify a prior art reference is one aspect of determining the scope and content of the prior art, a fact question subsidiary to the ultimate conclusion of obviousness.” (citing *Tec Air, Inc. v. Denso Mfg.*, 52 USPQ2d 1296, 1297-98 (Fed. Cir. 1999) (stating that the factual underpinnings of obviousness include whether a reference provides a motivation to combine its teachings with another)). Furthermore, as noted by the Federal Circuit in *In re Lee*, 61 USPQ2d 1430, 1433 (Fed. Cir. 2002), specific reasons must be shown in the art suggesting a combination of references. (See also *In re Kotzab*, 217 F.3d 1365, 1371, 55 USPQ2d 1313, 1317 (Fed. Cir. 2000) (“[P]articular findings must be made as to the reason the skilled artisan, with no knowledge of the claimed invention, would have selected these components for combination in the manner claimed.”); *In re Rouffet*, 149 F.3d 1350, 1359, 47 USPQ2d 1453, 1459 (Fed. Cir. 1998) (“[E]ven when the level of skill in the art is high, the Board must identify specifically the principle, known to one of ordinary skill, that suggests the claimed combination.”)). Goss discloses using bactericide as part of a cat litter composition. There is no suggestion that the animal toilet of Brazzell requires an anti-microbial agent, nor is there any indication that a bactericide as used in the animal litter composition of Goss could be successfully incorporated into the plastic artificial grass of Brazzell. Because the Office Action has cited no portion of Brazzell that would supply a person of ordinary skill in the art with a motivation to combine the teachings of Goss with the teachings of Brazzell, the combination of Brazzell with Goss is *prima facie* improper.

Furthermore, even if the combination of Brazzell with Goss were proper, Goss does not overcome the essential shortcoming of Brazzell, namely that Brazzell does not disclose a particle entrapment pad having a non-woven top layer. The combination of Brazzell and Goss is not sufficient to reject claim 5 because the Brazzell alone is not sufficient to reject claim from which claim 5 depends.

If the Examiner has any questions or concerns regarding the present response, the Examiner is invited to contact Kimberly O. Snead at 703-591-2664.

In view of the foregoing, it is respectfully submitted that this application is in condition for allowance, and favorable action is respectfully solicited.

Respectfully submitted,



Kimberly O. Snead
Reg. No. 45,119

JAGTIANI + GUTTAG
Democracy Square Business Center
10363-A Democracy Lane
Fairfax, Virginia 22030
703-591-2664

October 15, 2004